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Docket No. 07-0446

ENBRIDGE PIPELINES (ILLINOIS) L.L.C.)
)
Application pursuant to sections 8-503, 8-509, and)
15-401 of the Public Utilities Act/The Common)
Carrier by Pipeline Law to Construct and Operate a)
Petroleum Pipeline and, When Necessary, to Take)
Private Property as Provided by the Law of)
Eminent Domain)

**INTERVENOR AMERICAN PETROLEUM INSTITUTE'S MOTION TO EXCUSE
WITNESS FROM TESTIFYING AT HEARING, OR IN THE ALTERNATIVE,
MOTION TO LIMIT CROSS-EXAMINATION**

Intervenor, the American Petroleum Institute ("API"), by its attorneys, moves for entry of an Order excusing its Chief Economist, John C. Felmy, from appearing and testifying at the July 8, 2008 hearing in this matter, or in the alternative, an Order allowing Felmy to testify at the hearing by telephone. In addition, in either case if Felmy is required to testify in person or by telephone, API moves for entry of an Order limiting the scope of the cross-examination of Felmy at the hearing only to matters raised in his direct testimony. In support of its Motion, API states as follows:

1. On August 16, 2007, Enbridge Pipelines (Illinois) L.L.C. ("Enbridge") filed an Application for the Issuance of a Certificate of Good Standing (the "Application") pursuant to Sections 15-401(a), 8-503 and 8-509 of the Public Utilities Act, for the entry of an Order authorizing it to construct, operate, and maintain approximately 170 miles of new 36-inch liquid petroleum pipeline from near Pontiac to Patoka, as well as authorizing it, when necessary for the construction of the pipeline, to acquire private property in the manner provided for by the law of eminent domain.

2. On April 9, 2008, API filed a Petition for Leave to Intervene in this case.

3. Also on April 9, 2008, API filed the testimony of John C. Felmy, the Chief Economist for API, dated April 7, 2008. A copy of Felmy's April 7, 2008 testimony is attached as Exhibit A. Felmy's testimony was limited in scope to provide information regarding broad, industry-wide issues related to the international energy market.

4. In his testimony, Felmy provided his educational and professional background, and described the duties he performs for API. Ex. A, p. 2. Felmy also stated that he was providing his testimony to address why API believes that new pipeline infrastructure to transport Canadian oil into the United States is important. *Id.* at p. 3. Felmy also described API's purpose and operations. *Id.* at p. 3.

5. Felmy's testimony stated that API supports Enbridge's Petition because "[m]ajor new pipeline expansions will help ensure U.S. refineries have secure access to the growing supplies of crude oil produced in North America -- and in particular from growing Canadian supply sources." *Id.* at p. 4. Felmy testified that the United States needs to diversify sources of crude oil. *Id.* Felmy also testified that Enbridge's application is important to Illinois and the United States because:

Canadian oil makes the United States more energy secure. Coming from a close ally and economic partner, it is a reliable and plentiful resource to meet our nation's growing energy demand. And second, Canadian oil will provide greater fuel supply reliability for the Midwest and reduce the risk of supply disruptions to consumers. Canada is the United States' number one supplier of oil and natural gas.

Id. at p. 4-5.

6. Felmy also testified that Enbridge's extension pipeline project will contribute to the important cause of getting oil from Canada to the United States, and "Midwest refineries would move from being at the back of the crude supply line to the front." *Id.* at p. 5.

7. Felmy also testified that denying Enbridge's Petition would be detrimental because:

By constraining new pipeline capacity for moving Canadian crude oil, Canadian producers may not be as readily able to supply crude to the important pipeline hub at Patoka, thereby negatively impacting crude supply, which could have an impact on Illinois and Midwestern refiners. As a result, Canadian producers could well be forced to build (or increase) pipeline capacity to the west coast of Canada and export their crude output to China and/or other Asian countries. This would only result in an increase in reliance by Illinois and Midwestern refiners on crude supplies from less stable and secure sources and less friendly countries.

Id. at p. 6.

8. After the filing of Felmy's testimony, other intervenors served API with discovery requests that were overly broad and beyond the scope of Felmy's April 7, 2008 testimony. Specifically, on April 21, 2008, the Pleasant Murphy and Village of Downs intervenors submitted data requests on, among many other matters, the following issues:

- "Please name the 25 leading U.S. firms who have invested in Canadian Sand Tar and the amounts which you believe each firm has invested . . ." See Exhibit B, INT 2.1.
- "Please name the 25 leading IOC's and NOC's who own significant proven reserves of the Canadian sand tar located in the Province of Alberta." Ex. B, INT 2.2.
- "Please explain the consequences of demand from China on the price of crude oil in the United States." Ex. B, INT 2.3.
- "Please opine to a reasonable degree of professional certainty about how much netback will be realized for 2009 and also each of the next 10 years after 2009." Ex. B, INT 2.4.
- "Do you agree that China could by itself or with other Asian demand such as India consume all of the heavy Canadian manufactured liquid enriched bitumen?" Ex. B, INT 2.6.
- "You consistently advocate as an economic spokesperson for the API that government interference in the petroleum industry is costly and therefore undesirable. Is this true?" Ex. B, INT 2.9.

- “If a farm in McLean County, Illinois were in the same family for more than 100 years, and if this farm has never been subjected to a pipeline, would it be reasonable for the owner to ask Enbridge to route that pipeline around this farm?” Ex. B, INT 2.10.

9. After briefing a motion filed by the Pleasant Murphy and Village of Downs intervenors to compel API to answer the irrelevant data requests, on June 11, 2008, the ALJ ruled that the above requests, as well as others, did not have to be answered by API under the rules of discovery. A copy of the June 11, 2008 Order is attached as Exhibit C.

10. API expects that at the July 8, 2008 hearing, intervenors will pursue similar lines of questioning in cross-examining Felmy as they used in their data requests, which were denied as irrelevant by the ALJ.

11. Felmy should be excused from appearing and being subject to cross-examination at the July 8, 2008 hearing. The critical issues that will be addressed at the July 8, 2008 hearing are whether Enbridge’s Application has satisfied sections 15-401(a), 8-503, and 8-509 of the Public Utilities Act, namely whether the Application “was properly filed; a public need for the service exists; the applicant is fit, willing, and able to provide the service in compliance with this Act, Commission regulations, and orders; and the public convenience and necessity requires issuance of the certificate.” 220 ILCS 5/15-401(a). While Felmy’s April 7, 2008 testimony relates to the broad importance of pipelines to the United States, the testimony does not directly bear on the central issues that need to be applied under section 15-401(a) for the July 8, 2008 hearing. In other words, Felmy’s testimony does not include opinions that would directly support the 15-401(a) elements of Enbridge’s Application. Rather, the testimony is offered for the limited purpose of providing the Commission with a framework for viewing Enbridge’s Application within the larger international energy market and the policy concerns that surround

that market. Accordingly, API requests that an Order be entered excusing Felmy from appearing at the July 8, 2008 hearing and being subject to cross-examination.¹

12. If Felmy is required to testify at the hearing, API requests that Felmy be allowed to testify by telephone at the July 8, 2008 hearing. Given Felmy's limited testimony, which is only six transcript pages (Ex. A), and the fact that Felmy resides in the Washington, D.C., area, allowing Felmy to testify by telephone instead of in-person is justified in these circumstances.

13. In addition, in the event that Felmy is required to testify at hearing either in person or by telephone, the Commission should limit the scope of Felmy's cross-examination to matters included in Felmy's April 7, 2008 testimony. "As a general rule the scope of cross-examination is limited to the subject matter of direct examination." *People v. Hosty*, 146 Ill. App. 3d 876, 882 (1st Dist. 1986); *People v. Davis*, 19 Ill. App. 3d 709, 715 (1st Dist. 1994) ("Cross-examination should be limited to matters brought out on direct and it is improper to question a witness concerning irrelevant matters for the purpose of contradicting his testimony."); *Beard v. Barron*, 379 Ill. App. 3d 1, 17 (1st Dist. 2008) ("As a general rule, cross-examination is limited to the scope of direct examination.")

14. As provided above, it appears likely that certain intervenors will be asking cross-examination questions well beyond the matters included in Felmy's testimony. The ALJ has already found that the questions asked by intervenors during discovery are largely irrelevant and denied intervenors' requests. Ex. C. Similar requests at the July 8, 2008 hearing would similarly be beyond the scope of Felmy's April 7, 2008 testimony, and should not be allowed. *Hosty*, 146 Ill. App. 3d at 883 (Witness "testified on direct examination to conversations she had with defendant prior to the installation of listening devices on December 28, the line of questioning

¹ As part of its request to excuse Felmy from testifying, API will waive its right to cross-examine any witnesses at the July 8, 2008 hearing.

objected to by the State pertained to conversations with defendant which occurred after that date. Therefore, defendant's questions were beyond the scope of direct examination.") In order to limit intervenors from "cross-examination on irrelevant matters or ones so remote as to be collateral," API requests that in the event that Felmy is required to testify at the July 8, 2008 hearing, an Order be entered to limit the scope of the cross-examination only to matters raised in Felmy's April 7, 2008 testimony.

WHEREFORE, Intervenor, the American Petroleum Institute, requests that an Order be entered excusing API's Chief Economist John C. Felmy from appearing and testifying at the July 8, 2008 hearing, or in the alternative, enter an Order allowing Felmy to testify by telephone. In addition, if Felmy is required to testify either in person or by telephone, API further requests that an Order be entered limiting the scope of the cross-examination of Felmy to the matters presented in Felmy's April 7, 2008 testimony.

Respectfully submitted,

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